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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1473

COMMANDER KNOX, et al.,
Petitioners,

versus

ESTELLA BROWN,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE
SUPREME COURT OF THE UNITED STATES
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No.

COMMANDER KNOX, et al.,
Petitioners,
versus
ESTELLA BROWN,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Petitioners pray for the issuance of a writ of certiorari to review the decision of the United States Court of Appeals, Fifth Circuit, entered on February 25, 1977 in the case styled Estella Brown, Plaintiff-Appellant, versus Commander Knox, et al., Defendants-Appellees, No. 76-3094, on appeal from the United States District Court for the Middle District of Georgia, Columbus Division, Civil Action No. 76-31.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 547 F.2d 900. The opinion of the District Court is unreported. Copies of both opinions are appended to this

petition in Appendix "A", as is also the Judgment of the Court of Appeals.

JURISDICTION

The judgment or decree of the Court of Appeals on which Petitioners seek review is dated and was entered on February 25, 1977. A petition for rehearing and a petition for rehearing en banc were denied on March 23, 1977, and a copy of the correspondence advising counsel of same has been appended to this petition in Appendix "A". The statutory provision believed to confer on the Supreme Court jurisdiction to review the judgment or decree of the Court of Appeals by writ of certiorari is 28 U.S.C. §1254(1) (62 Stat. 928).

QUESTIONS PRESENTED FOR REVIEW

This case raises at least three questions of exceptional importance in the general areas of pendent jurisdiction and federalism which can be inquired into by examination of the complaint which alleges five state tort counts (false imprisonment, intentional infliction of emotional distress, malicious prosecution, assault and battery, and conversion of property), all alleged to be "in violation of the laws of the State of Georgia," and to which is attached a single federal count found in Paragraph 30 of the complaint:

> "By reason of the foregoing, Plaintiff was deprived of her rights to be secure in her person, *from illegal arrest and imprisonment and from illegal force and violence* guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution."

Emphasis is added in this quote of Paragraph 30 of the complaint, and "the foregoing" refers to all of the factual allegations out of which the federal and state counts arise.

(1) Is a federal claim merely incidental and overlapping (and thus asserted only for jurisdictional purposes) when its proof *of necessity* depends upon proof of the attached state law claims?

(2) Do the doctrines of abstention and comity suggest that all claims of a six count complaint should be dismissed when five of these counts invoke state tort provisions and only one count invokes a federal provision which in turn adopts as *its elements* state provisions alleged in other counts?

(3) The case involves the very broad and the very fundamental question of whether or not our federal courts will become forums for the trial of tort cases which have traditionally been left in the state courts and for which state law provides adequate remedies.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The case involves the following constitutional provisions and statutes, all of which are set out verbatim in Appendix "B".

Fourth Amendment to the United States Constitution.

Fourteenth Amendment to the United States Constitution.

42 U.S.C. §1983 (R.S. §1979; 17 Stat. 13).
42 U.S.C. §1988 (R.S. §722; 14 Stat. 27; 16 Stat. 144).
28 U.S.C. §1343 (62 Stat. 932; 68 Stat. 1241; 71 Stat. 637).

STATEMENT OF THE CASE

The facts material to the consideration of this case are contained in the attached opinions of the courts below which we summarize. We note, however, that the District Court's description of the incident as "the alleged circumstances of an arrest of the Plaintiff" is a more accurate portrayal of the *single incident* occurring on a *single day* than is the Court of Appeals' description of "a series of harassments," from which the reader might wrongfully infer *separate* incidents on *separate* days. As stated in the opinion of the Court of Appeals the allegations of the complaint charge that "the police officers, having refused to identify themselves and having failed to produce a warrant, threatened, beat, kicked, insulted, pushed, and abducted her after she saw them exiting her home," and they then allegedly "carried her, partially clothed, to the police station, held her incommunicado, and charged her with public drunkenness, disorderly conduct, and resisting arrest — none of which charges ever came to trial." The Court of Appeals stated that these alleged events "form the basis of plaintiff's claim under the Fourth and Fourteenth Amendments" and "the focus of her various state tort claims." We suggest that the allegations constitute the *basis* for the state claims and that the state claims constitute the *basis* for the federal claim.

The District Court exercised its discretion and dismissed all of the claims (without prejudice) because "the federal count in the complaint is simply incidental to the state law counts" and "the state law issues would substantially predominate." The federal claim was viewed only as an appendage "asserted simply for the purpose of giving this Court jurisdiction." The state claims were held to "constitute the real body of the case", and "sound principles of federalism dictate that this Court should defer to state court jurisdiction of this matter."

The Court of Appeals substituted its discretion for that of the District Court and reinstated the complaint. The Court of Appeals concluded that the §1983 claim was "substantial," that jurisdiction was satisfied, and that "the relative number, size, or apparent significance of federal versus state claims is irrelevant to the question of judicial power." The Court of Appeals concluded further that "principles of judicial economy, convenience, and fairness to litigants dictate the assumption of jurisdiction over the state claims." The opinion makes a footnote reference to the abstention doctrine, but the opinion does not attach any significance to the plaintiff's allegations of state law claims as the *essential elements* of the single federal claim, but a reading of the sole federal claim in Paragraph 30 — set out above in the "Questions" section — and particularly the italicized phrases, reveals that the plaintiff would have considerable difficulty proving her federal claim without first proving the underlying state claims, i.e., the state counts are the *elements* or the *real body* of the case, while the federal count is only *incidental*.

REASONS FOR THE ALLOWANCE OF THE WRIT

A. The Court of Appeals has decided a federal question in a way in conflict with applicable decisions of the Supreme Court and this is an important question of federal law which should be settled by the Supreme Court.

1.

The case at bar is unlike the cases of *Bell v. Hood*, 327 U.S. 678 (1946) and *Monroe v. Pape*, 365 U.S. 167 (1961), both of which involved allegations of Fourth Amendment violations, but neither of which were concerned with overlapping state claims and the attendant questions of pendent jurisdiction and federalism. *Bell* noted that the plaintiff decides what law he will rely upon and whether he will bring a suit under the Constitution or laws of the United States (327 U.S. 678, 681) and that "a writ may sometimes be dismissed for want of jurisdiction where the alleged claim under the Constitution or federal statutes clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous" (327 U.S. 678, 682, 683). It can hardly be said in the case at bar that the plaintiff made a very clear election to proceed under federal law, and the quote from *Bell* relating to dismissals supports the District Court rather than the Court of Appeals.

2.

The case at bar presents an opportunity for this Court to expand upon the pendent jurisdiction matters

discussed in *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966), particularly the following provisions of that decision either misapprehended or overlooked by the Court of Appeals:

(a) "The federal claim must have substance sufficient to confer subject matter jurisdiction on the court." 383 U.S. 715, 725. There is no substance to a federal claim which has as its *elements* various attached state claims.

(b) "It has consistently been recognized that pendent jurisdiction is a doctrine of discretion, not plaintiff's right." 383 U.S. 715, 726. The District Court's discretion was set aside by the panel without any clear finding of abuse. See *Langnes v. Green*, 282 U.S. 531, 541, 542 (1931) where the term "discretion" is said to denote "the absence of a hard and fast rule" and where the "correcting power of the appellate court" is said to control an "abuse of discretion."

(c) "Needless decisions of state law should be avoided, both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law. Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well. Similarly, if it appears that the state issues substantially predominate, whether in terms of proof, of the scope of the issues raised, or of the comprehensiveness of the remedy sought, the state claims may be dismissed without prejudice and left for resolution to state tribunals." 383 U.S. 715, 726, 727. State issues

predominate when they outnumber the federal claim and when proof of the federal claim depends upon proof of the state claims.

(d) "For example, it may appear that the plaintiff was well aware of the nature of his proofs and the relative importance of his claims; recognition of a federal court's wide latitude to decide ancillary questions of state law does not imply that it must tolerate a litigant's effort to impose upon it what is in effect only a state law case. Once it appears that a state claim constitutes the real body of a case, to which the federal claim is only an appendage, the state claim may fairly be dismissed." 383 U.S. 715, 727. If this is *not* a state law case, it is doubtful if any such cases exist in the area of pendent jurisdiction.

3.

The case at bar presents an opportunity for this Court to clarify some of the problems which surely have arisen and which surely shall arise from the decision in *Hagans v. Lavine*, 415 U.S. 528 (1974), which is a pendent jurisdiction case involving the pendency of a federal statutory claim to a federal constitutional claim and involving preemption principles under the Supremacy Clause — and which is thus not controlling here. *Hagans* is more significant because of some of the questions raised by the dissenters. The Court of Appeals overlooked the persuasive discussion relating to matters of federalism by Justice Powell dissenting at page 552:

> "The correct reading of *Gibbs*, as a matter of common sense and in light of deeply rooted

> notions of federalism, is that the federal claim must have more than a glimmer of merit and must continue to do so at least until substantial judicial resources have been committed to the lawsuit. If either of those conditions is not met, a district court has no business deciding issues of state law. District courts are not expositors of state law when jurisdiction is not based on diversity of citizenship."

The Court of Appeals overlooked the discussion in Justice Rehnquist's dissenting opinion (concurred in by Justice Powell and the Chief Justice) at page 564:

> "At the very least, the District Court, before it chose to exercise pendent jurisdiction, should have made an identifiable determination that the Equal Protection Clause was not simply asserted for the purpose of giving the Court jurisdiction over the heart of the plaintiffs' case. To my mind this seems to be a classic case of the statutory tail wagging the constitutional dog."

In the present case we have a classic case of the state tail wagging the federal dog.

4.

The Court of Appeals overlooks the converse of the doctrine in *Osborn v. Bank of the United States*, 9 Wheaton 738 (1824), where the jurisdiction of federal courts was held to extend to the federal issues and to the non-federal issues essential to the settlement of the federal claim based upon the valid reasoning that

federal courts would otherwise be stripped of most of their cases. "There is scarcely any case, every part of which depends on the constitution, laws, or treaties of the United States." 9 Wheaton 738, 820. Likewise, there is scarcely any case in which an imaginative plaintiff can not make at least a casual allusion to the United States Constitution.

5.

The Court of Appeals overlooked *Siler v. Louisville & Nashville Railroad Company*, 213 U.S. 175 (1909), a pendent jurisdiction case in which the court reminds us that "the federal question must not be merely colorable or fraudulently set up for the mere purpose of endeavoring to give the court jurisdiction." 213 U.S. 175, 191, 192.

6.

The case at bar is built upon elements of Georgia tort law just as surely as the case in *Gully v. First National Bank in Meridian*, 299 U.S. 109 (1936) was built upon Mississippi contract law, and where, consequently, this Court found no elements of federal jurisdiction under removal statutes. We abbreviate Justice Cardozo's opinion with two relevant passages:

> "The most one can say is that a question of federal law is lurking in the background, just as farther in the background there lurks a question of constitutional law, the question of state power in our federal form of government. A dispute so doubtful and conjectural, so far removed from plain necessity, is unavailing to extinguish the jurisdiction of the states." 299 U.S. 109, 117.

> "As in problems of causation, so here in the search for the underlying law. If we follow the ascent far enough, countless claims of right can be discovered to have their source or their operative limits in the provisions of a federal statute or in the Constitution itself with its circumambient restrictions upon legislative power. To set bounds to the pursuit, the courts have formulated the distinction between controversies that are basic and those that are collateral, between disputes that are necessary and those that are merely possible. We shall be lost in a maze if we put that compass by." 299 U.S. 109, 118.

7.

The case at bar does not present a situation in which the outcome depends upon a construction of the Constitution or laws of the United States because the plaintiff could not prevail unless she proved violations of underlying Georgia law, and in this posture, *Blackburn v. Portland Gold Mining Co.*, 175 U.S. 571, 580 (1900), is significant (Justice Shiras quotes Chief Justice Waite from an earlier case, *Little York Gold-Washing & Water Co. v. Keyes*, 96 U.S. 199):

> "The attempt to transfer this cause was made under that part of §2 of the act of 1875 which provides for the removal of suits 'arising under the Constitution or laws of the United States.' In the language of Chief Justice Marshall, a case 'may truly be said to arise under the Constitution or a law of the United States whenever its correct decision depends upon the construction of either.' *Cohen v.*

Virginia, 6 Wheat. 379, 5 L.ed. 285. Or when 'the title or right set up by the party may be defeated by one construction of the Constitution or law of the United States, or sustained by the opposite construction.' *Osborn v. Bank of United States*, 9 Wheat. 822, 6 L.ed. 224."

8.

The case at bar provides this Court with an opportunity of asserting that federal courts will refrain from "brushing aside" the courts of a State just as this Court asserted some years ago that federal courts would refrain from "brushing aside" the law of a State. *Erie Railroad Company v. Tompkins*, 304 U.S. 64, 78 (1938).

9.

The case at bar provides this Court with an opportunity to continue to steer the course of noninterference with state and local affairs as illustrated by three recent cases:

(a) *Paul v. Davis*, 96 S.Ct. 1155 (1976): Something more than a simple defamation by a state official is required to establish a claim under §1983, and the Fourteenth Amendment is not "a font of tort law to be superimposed upon whatever systems may already be administered by the States." 96 S.Ct. 1155, 1160.

(b) *Aldinger v. Howard*, 96 S.Ct. 2413 (1976): There is no pendent or ancillary jurisdiction on a nonfederal claim over a county in

a Civil Rights action where party federal jurisdiction would be otherwise nonexistent.

(c) *Juidice v. Vail*, 45 LW 4269 (Mar. 22, 1977): *Younger* and *Huffman* notions of comity and federalism are expanded to require noninterference with state contempt proceedings.

B. The Court of Appeals has rendered a decision in conflict with the decisions of other courts of appeal on the same general matters in the First, Second, Third, Fourth, Sixth, Ninth, and Tenth Circuits.

1.

Rivera v. Chapel, 493 F.2d 1302 (1st. Cir. 1974).

Plaintiffs brought a §1983 action against milk regulations of Puerto Rico alleging violations of a Puerto Rican statute and the Fifth and Fourteenth Amendments. The Court of Appeals concluded at page 1303 that the plaintiffs had done nothing more than "contend that defendants have not complied with the statute in question, and their constitutional and statutory rights were thereby violated" and the Court found itself "unable to extract a federal question from the ore of plaintiffs' allegations."

2.

Howard v. Furst, 238 F.2d 790 (2d. Cir. 1956), cert. den. 353 U.S. 937.

Stockholders' derivative action alleged waste and sought injunction of voting proxies allegedly obtained by false and misleading proxy statement. The Court of Appeals applied *Gully* test and concluded at page 794 "that every essential element of appellant's case depends upon the common law and the statutes of the State of New York" and that the "allegations with reference to the proxy statement constitute a mere excresence or superfluity, tacked onto what are otherwise sufficient allegations for relief under New York law."

3.

Warrington Sewer Company v. Tracy, 463 F.2d 771 (3d. Cir. 1972).

> "Warrington's cause of action does not have, as an essential element, a right or immunity created by the Constitution or laws of the United States. . . . A bare allegation of violation of the due process clause of the Fourteenth Amendment is not sufficient to confer federal jurisdiction." 463 F.2d. 771, 772.

4.

Smith v. Spina, 477 F.2d. 1140 (3d. Cir. 1973).

The Court of Appeals makes the following observation at page 1144 in connection with its comment on *erroneous* instructions that would have made defendants liable under §1983 if police officers committed unlawful acts under the civil or criminal laws of the State: "Recovery under §1983 is strictly limited to deprivations under the federal constitution and *federal* law." (Emphasis in original)

5.

Woodhouse v. Budwesky, 70 F.2d. 61 (4th Cir. 1934), cert. den. 293 U.S. 573.

Complaint alleged oppressive prosecution of claim by attorneys with assistance of state judge and court and denial of tax exemption by local tax assessors in violation of federal constitutional rights. The Court of Appeals holds that "the bill alleges tortious conduct 'not in exertion of the state law but in violation of it,' " that "it is not sufficient to sustain jurisdiction that the pleadings merely assert that conduct complained of violates constitutional rights": "There must be a 'federal question, not in mere form, but in substance, and not in mere assertion, but in essence and effect.' " 70 F.2d. 61, 62 (Cites omitted)

6.

Bates v. Dause, 502 F.2d. 865 (6th Cir. 1974).

The Court of Appeals concluded that Kentucky courts were capable of hearing claims under state Teachers' Tenure Law and that school principals had no constitutional right to support a school strike which the Kentucky Court of Appeals had held illegal. "Transfer of jurisdiction to federal courts cannot be accomplished by the procedural device of filing an unsubstantial action under §1983, coupled with a prayer for exercise of pendent jurisdiction." 502 F.2d. 865, 867.

7.

Dinneen v. Williams, 219 F.2d. 428 (9th Cir. 1955).

> "There are no 'facts' pleaded as a basis, but there are bald conclusions that the action was

in violation of the Fourteenth Amendment, implemented by the Third Civil Rights Act .... The complaint stated a claim of false imprisonment cognizable only by state law." 219 F.2d. 428, 429.

8.

Aldinger v. Howard, 513 F.2d. 1257, 1261 (9th Cir. 1975), affirmed, 96 S.Ct. 2413.

"... [P]endent state law claims arising in the context of federal civil rights actions will almost inevitably involve the same sort of difficult and unsettled questions of state law, and result in the same concomitant potential for jury confusion ..."

9.

Sanders v. Independent School District No. I-2, of Kiowa County, Oklahoma, 459 F.2d. 51 (10th Cir. 1972).

Plaintiff school teacher alleged civil rights action under §1983 and §1343(3) claiming wrongful discharge because of defendant's dislike of plaintiff's mustache. The Court of Appeals dismissed for lack of jurisdiction with the observation that this was merely a breach of contract claim. "The Civil Rights Act cannot be used as a jurisdictional subterfuge for traditional lawsuits." 459 F.2d. 51, 52.

CONCLUSION

All of the above argument and authority points to the same conclusion that the District Court reached in dismissing the action. We respectfully suggest that

the District Court also reached a conclusion consistent with common sense and the general historical experience of this country. This case is an unnecessary burden upon the federal judiciary. The federal sovereign cannot solve the problem here any better than can the state sovereign. A trial of this case would inevitably involve the questions of the underlying state laws with federal law and the federal Constitution merely sitting in the background — neglected and unnoticed at the very least and at the very most only occasionally stepping forward to confuse the state issues.

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CERTIFICATE OF SERVICE

I, Eugene Hardwick Polleys, Jr., Attorney for Petitioners, do hereby certify that I have caused the publisher to serve by United States Air Mail, postage prepaid, the required copies of this Petition for a Writ of Certiorari to the United States Court of Appeals, Fifth Circuit, upon Ms. Henrietta Turnquest, Attorney for Respondent, 1237 First Avenue, Suite 200, Columbus, Georgia 31902.

Eugene Hardwick Polleys, Jr.

APPENDIX A

Estella BROWN, Plaintiff-Appellant,

v.

Commander KNOX et al.,
Defendants-Appellees.

No. 76-3094
Summary Calendar.*

United States Court of Appeals,
Fifth Circuit.

Feb. 25, 1977.

* * * *

Before GODBOLD, HILL and FAY, Circuit Judges.

GODBOLD, Circuit Judge:

This case comes to us on appeal from the district court's dismissal of a 42 U.S.C. § 1983 complaint, without prejudice to the right of the plaintiff to sue in state court. The precise issue is whether the doctrine of pendent jurisdiction established in *United Mine Workers v. Gibbs*, 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966), required the district court to hear plaintiff's federal and state claims. We hold that it did.

Plaintiff, a black woman, alleged a series of harassments by two police officers, which culminated in an unconstitutional arrest and a subsequent prosecution of plaintiff to discourage her from bringing brutality charges, to discredit such charges, and to punish her because of her race and her resistance to

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* Rule 18, 5 Cir.; *see Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York et al.*, 5 Cir., 1970, 431 F.2d 409, Part I.

the harassment. These allegations formed the basis of a § 1983 claim as well as pendent state claims for false imprisonment, intentional infliction of emotional distress, malicious prosecution, assault and battery, and conversion. The district court dismissed on the ground that it would defer to state court jurisdiction, because the federal claim was "simply incidental to the state law counts", which constituted the "real body" of the case and which would "substantially predominate not only in the scope of the litigation and in terms of proof, but also in the nature of the remedy sought."

The district court failed to apply the proper jurisdictional test to the complaint before it. *Gibbs* held that if the federal issues in the case are substantial, and if the state claims "derive from a common nucleus of operative fact," the federal court has the "judicial *power*" to hear the whole case, i.e., both federal and state-based claims. 383 U.S. at 725, 86 S.Ct. at 1138, 16 L.Ed.2d at 227-28 (emphasis in original). We find that both of these jurisdictional prerequisites have been met here.

First, the federal § 1983 claim is substantial. The allegations of police harassment certainly suffice to confer subject matter jurisdiction on the district court. See, e. g., *Anderson v. Nosser*, 438 F.2d 183 (C.A. 5, 1971), *modified en banc*, 456 F.2d 835 (C.A. 5, 1972), *cert. denied*, 409 U.S. 848, 93 S.Ct. 53, 34 L.Ed.2d 89 (1972); cf. *Burton v. Waller*, 502 F.2d 1261, 1274-75 n. 6A (C.A. 5, 1974), *cert. denied*, 420 U.S. 964, 95 S.Ct. 1356, 43 L.Ed.2d 442 (1975). Jurisdiction being satisfied, the relative number, size, or apparent significance of federal versus state claims is irrelevant to the question of judicial power.

Second, the state and federal claims derive from a common nucleus of operative fact. Taking it most favorably to her, *Sims v. Adams*, 537 F.2d 829 (C.A. 5, 1976), plaintiff's complaint is that the police officers, having refused to identify themselves and having failed to produce a warrant, threatened, beat, kicked, insulted, pushed, and abducted her after she saw them exiting her home. They then carried her, partially clothed, to the police station, held her incommunicado, and charged her with public drunkenness, disorderly conduct, and resisting arrest — none of which charges ever came to trial. These allegations form the basis of plaintiff's claim under the Fourth and Fourteenth Amendments. This same chronology of alleged events will also be the focus of her various state tort claims.

We thus hold that the district court had the jurisdictional *power* to entertain the Georgia tort allegations in the complaint. A second question then remains. Could the court exercise its *discretion*, vis-a-vis these claims and these claims alone, to refuse to hear them anyway? "[P]endent jurisdiction is a doctrine of discretion, not of plaintiff's right." *Gibbs, supra*, 383 U.S. at 726, 86 S.Ct. at 1139, 16 L.Ed.2d at 228.[1] in *Gibbs*

1 The court did not distinguish among *Gibbs* power, *Gibbs* discretion, and federal abstention inquiries. Because the § 1983 claim here is *substantial* (and the state and federal claims derive from a common nucleus of operative fact), the district court had the power under *Gibbs* to hear both. The language of *Gibbs* tracked in the court's opinion answers the discretion question, not the power one, and only the discretion to dismiss the *state* claims, not the entire case. Finally, the district court noted.

"In these circumstances sound principles of federalism dictate that this Court should defer to state court jurisdiction of

Justice Brennan catalogued the relevant factors affecting the discretion question. See also *Aldinger v. Howard*, ___ U.S. ___, ___ – ___, 96 S.Ct. 2413, 2429-2430, 49 L.Ed.2d 276, 298-99 (1976) (Brennan, J., dissenting). We have given due consideration to these factors. "In view of the posture of the case before the district court, we think the court lacked an acceptable basis for exercising its discretion to refuse to entertain the pendent jurisdiction claim." *Knuth v. Erie-Crawford Dairy Cooperative Association*, 395 F.2d 420, 427 (C.A. 3, 1968). In so holding, we take note of the Supreme Court's dictum in *Hagans v. Lavine*, 415 U.S. 528, 545, 94 S.Ct. 1372, 1383, 39 L.Ed.2d 577, 592-93 (1974):

> . . . it is evident from Gibbs that pendent state law claims are not always, or even almost always, to be dismissed and not adjudicated. On the contrary, given advantages of economy and convenience and no unfairness to litigants, Gibbs contemplates adjudication of these claims.

Here, with the possible exception of the claim for intentional infliction of emotional distress, the issues of state law are not particularly complex but rather spring from traditional tort actions. As a result, we need not be overly concerned with "procuring for [the parties] a surer-footed reading of applicable law." *Gibbs, supra*, 383 U.S. at 726, 86 S.Ct. at 1139, 16 L.Ed.2d at 228. Neither do we foresee that the proof will be substantially devoted to the unique elements of the state tort actions, or that the issues or remedies involved in these actions will "substantially predominate" the litigation. In short, principle of judicial economy, convenience, and fairness to litigants dictate the assumption of jurisdiction over the state claims. See *Perry v. Jones*, 506 F.2d 778 (C.A. 5, 1975); cf. *Knuth, supra*, at 427.

REVERSED and REMANDED.

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this matter. For this reason the Defendants' motion to dismiss the complaint is sustained and the complaint is dismissed." No abstention doctrine requires federal courts to relinquish their jurisdiction over federal claims simply because the same facts would state a claim under state law. Indeed, in the § 1983 context such "abstention" would be peculiarly inappropriate. *Monroe v. Pape*, 365 U.S. 167, 183, 81 S.Ct. 473, 481-482, 5 L.Ed.2d 492, 503 (1961). *But cf. Paul v. Davis*, 424 U.S. 693, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976).

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 76-3094
Summary Calendar

D. C. Docket No. CA76-31COL

ESTELLA BROWN,
Plaintiff-Appellant,

versus

COMMANDER KNOX, Director
Chapman, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the
Middle District of Georgia

Before GODBOLD, HILL and FAY, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Georgia, and was taken under submission by the Court upon the record and briefs on file, pursuant to Rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed and that this cause be and the same is hereby remanded to the said District Court in accordance with the opinion of this Court;

It is further ordered that defendants-appellees pay to plaintiff-appellant, the costs on appeal to be taxed by the Clerk of this Court.

February 25, 1977

Issued as Mandate:

MEMORANDUM OPINION AND ORDER

In the United States District Court
For the Middle District of Georgia
Columbus Division

ESTELLA BROWN,
Plaintiff,

versus CA NO. 76-31-COL

COMMANDER KNOX, DIRECTOR CHAPMAN, DETECTIVE SGT. GEORGE POTTER, DETECTIVE SGT. R. P. JACKSON and THE CITY OF COLUMBUS,
Defendants.

Filed: JUN 15, 1976

This is a suit for damages arising out of the alleged circumstances of an arrest of the Plaintiff made by some of the Defendants, who are police officers. In turn, some of the Defendants assert counterclaims for damages against the Plaintiff.

The Plaintiff's complaint is set out in six counts.

In one count she alleges that she "was falsely imprisoned in violation of the laws of the State of Georgia".

In another count she alleges that she was "intentionally subjected to the infliction of emotional distress in violation of the laws of the State of Georgia".

In another count she alleges that she was "maliciously prosecuted in violation of the laws of the State of Georgia".

In another count she alleges that she was "without cause or provocation assaulted and beaten in violation of the laws of the State of Georgia".

In another count she alleges that her "property was subjected to conversion in violation of the laws of the State of Georgia".

In another count she alleges that by reason of these violations of state law she was deprived of rights guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States, and she suggests that for this reason this Court should assume pendent jurisdiction of the state claims.

All of the counterclaims asserted by the Defendants are based on state law.

The Defendants contend that the issues should be litigated in the state courts and have filed a motion to dismiss the Plaintiff's complaint.

It is clear that a Federal Court has the power to exercise pendent jurisdiction in a situation where the overriding claim is federal in nature and the claims under state law are simply incidental to it, but here the federal count in the complaint is simply incidental to the state law counts. When the complaint is examined it is obvious that upon trial the state law issues would substantially predominate not only in the scope of the

litigation and in terms of proof, but also in the nature of the remedy sought. The state claims constitute the real body of the case to which the federal claim is only an appendage, the federal question being asserted simply for the purpose of giving this Court jurisdiction.

In these circumstances sound principles of federalism dictate that this Court should defer to state court jurisdiction of this matter. For this reason the Defendants' motion to dismiss the complaint is sustained and the complaint is dismissed. This dismissal is without prejudice, however, to the right of the Plaintiff to reinstate the complaint in the appropriate state court.

IT IS SO ORDERED this 15th day of June, 1976.

/s/ J. ROBERT ELLIOTT
UNITED STATES
DISTRICT JUDGE

United States Court of Appeals
Fifth Circuit
Office of the Clerk
March 23, 1977

TO ALL PARTIES LISTED BELOW:

No. 76-3094 — Estella Brown v. Commander Knox, etc., ET AL.

Dear Counsel:

This is to advise that an order has this day been entered denying the petition for rehearing, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the petition for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,
EDWARD W. WADSWORTH,
Clerk

/s/ SUSAN M. GRAVOIS
Deputy Clerk

/smg
cc: Ms. Henrietta E. Turnquest
Mr. E. H. Polleys, Jr.

APPENDIX B

AMENDMENT IV — SEARCHES AND SEIZURES

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

* * * *

AMENDMENT XIV. — CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other

crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.
R.S. § 1979.

§ 1988. Proceedings in vindication of civil rights

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.
R.S. § 722.

§ 1343. Civil rights and elective franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under the color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.